

Dear Chairman Powell:

Having reviewed the proposed nationwide programmatic agreement negotiated between the FCC, the National Conference of Historic Preservation Officers and the Advisory Council on Historic Preservation to establish a process for carrying out the provisions of the National Historic Preservation Act § 106, I offer below for your consideration 3 specific comments and 3 more general comments. I do know that the negotiation process will continue between the 3 primary parties involved with this PA. I have carbon copied my comments to Nancy Schamu at the NCSHPO for the NCSHPO's consideration.

1) II. a. 4. "Collocation": This provision ought to be written: "The mounting of an Antenna on an existing Facility for the purpose . . ." Including the terms "building, or structure" introduces two poorly defined ideas into what is arguably an acceptable exemption. I believe that your definition of "Facility" accurately reflects the intention of this provision.

2) III. a. 1. and 2. "Modification . . ." and "Construction . . .": These provisions ought to account for known archeological sites that are recorded in a state's inventory of such properties where new ground disturbing activity will take place. So, these provisions ought to be written: 1. ". . . as defined in the Collocation Agreement, where there are no known archeological sites that are recorded in the state's inventory of such properties located within the area of new ground disturbance," and 2. ". . . or utility easement related to the site where there are no known archeological sites that are recorded in the state's inventory of such properties located within the area of new ground disturbance."

3) III. a. 5. (2) "Construction . . .": We concur with the comments of the NCSHPO that National Register listed or eligible properties ought to be referenced in this provision. Thus, I offer the following possible language expressing this idea: "or other non-archeological property that is listed in or eligible for listing in the National Register of Historic Places." So, the provision may read: ". . . (2) the proposed facility lies within 200 feet of (a) any other structure that is 45 years or older, or (b) any other non-archeological property that is listed in or eligible for listing in the National Register of Historic Places, or . . ."

4) Add new provision: "XVI. OTHER FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, RULES, OR ORDINANCES": We believe that a general provision referring to other applicable laws ought to be included in the PA:

XVI. OTHER FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, RULES, OR ORDINANCES.

No provision of this PA, whether express or implied, is intended or designed to exempt any of the signatories, their delegates or assigns to this PA from their respective obligations, duties and responsibilities pursuant to any provisions of any federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.

5) Add new provision: " XVII. SUNSET PROVISION " We believe that the PA ought to include a sunset provision such as the following:

XVII. SUNSET PROVISION

This PA shall remain in force for seven (7) years from the date of the final signature unless the PA is terminated or superceded by another PA.

6) In Wisconsin, for the past year, we have required all federal agency representatives and their delegates to comply with the process we have established for submitting § 106 materials. The process deals only with issues involving the agency and the shpo—no other provisions of the Act or the regulations are dealt with in this process. Interestingly, the proposed nationwide PA is very similar to our process. While our web site is evolving steadily, you may see the current state of our process at:

http://www.wisconsinhistory.org/histbuild/protecting/106_intro.html

Thank you very much for considering these comments. If I may answer any questions or may assist in any way, please contact me by email or by telephone or at the address recorded below.

Sincerely,

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